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## **An Overview of the Legal Rights of Culturally Deaf Criminal Suspects**

**Katrina R. Miller & McCay Vernon, Ph.D.**

### **Abstract**

The majority of culturally deaf individuals who become suspects in a criminal investigation are persons who have limited understanding of legal terminology and procedures. Despite legal safeguards such as the Miranda Warnings and the Americans with Disabilities Act (ADA), Mirandizing these individuals continues to present unique challenges to law enforcement due to the diverse educational and communication abilities of the deaf population. This discussion will focus on legally established civil rights of signing deaf suspects in relation to the administration of the Miranda Warnings and other legal proceedings.

The Miranda Warnings are a public safeguard that became a part of police procedure as a result of a decision by the Supreme Court in the case of *Miranda v. Arizona* (1966). Uneducated and disenfranchised Americans were granted dignity and protection under this ruling, because it helped to protect their rights under the law (Table 1). The passage of Miranda law is considered a landmark decision in the civil rights arena.

For many deaf individuals, the 1966 Miranda decision did not carry much significance in terms of their civil rights until the passage of the Americans with Disabilities Act (ADA) in 1990. This is because in the years between the Miranda decision and the enactment of ADA, the 30% to 50% of educationally deprived deaf suspects whose primary language is American Sign Language (ASL) were excluded from receiving the Miranda Warnings in language that they could understand because there was no legal requirement to make an interpreter available (Vernon & Coley, 1978).

Police departments across the nation began providing accommodation in the form of a printed version of the Miranda for deaf suspects to read. This is an effective accommodation for suspects who are well-educated and culturally deaf, late-deafened, or postlingually hard-of-hearing. However, based on data regarding the reading levels of deaf individuals, over half read below the reading level at which the Warnings are typically provided (Vernon & Coley, 1978; Vernon, Raifman & Greenberg, 1996; Center for Assessment and Demographic Studies, 1996). It is primarily the barriers experienced by undereducated deaf signing criminal suspects that this paper addresses.

Despite essential ideological and legislative transformations that have fundamentally impacted American society, administering the Miranda Warnings to deaf suspects continues to present obstacles for these individuals and police departments. This paper focuses on issues of law

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enforcement and the criminal justice system as they impact culturally deaf suspects with below-average reading levels. These individuals comprise the majority of deaf people who become involved with the criminal justice system.

**Table 1. Miranda Warnings and Waiver (Advice of Rights)**

**Warnings**

1. You have the right to remain silent and not make any statement at all.
2. Any statement you make can and will be used as evidence against you in a court of law.
3. You have the right to have a lawyer present to advise you prior to and during any questioning.
4. If you are unable to afford or employ a lawyer, you have the right to have a lawyer appointed to counsel with you before and during any questioning.
5. You have the right to stop answering questions and terminate the interview at any time.

**Waiver**

1. Do you understand each of these rights I have explained to you?
2. Prior to and during the making of a statement, do you hereby knowingly, intelligently, and voluntarily waive these explained rights?
3. Do you wish to make a voluntary statement of your own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever?
4. If you are 15 years of age or older at the time of the violation of a penal law of the grade of felony, the juvenile court may waive its jurisdiction, and you may be tried as an adult.

Texas version provided by Beaumont Fire and Rescue, 2000

**The Origin of the Miranda Warnings**

Miranda v. Arizona (1966) was a case on appeal to the Supreme Court which involved Ernesto Miranda, a man charged with kidnapping and raping a mentally retarded woman. After a two-hour interrogation, Miranda confessed, which led to his conviction for the crime. Miranda appealed the decision, stating that at the time of his arrest he had only an eighth grade education and was not aware of his Constitutional rights not to incriminate himself and to be provided with legal representation.

The Supreme Court affirmed Miranda's position, asserting that suspects must be informed of their Fifth and Sixth Amendment rights prior to confessing to a crime. These protections were put in place by what is now referred to as the Miranda Waiver. Its intent is to ensure that all citizens are given equal access to the protections provided by the law, regardless of social status or educational background. If a person makes a confession without having been administered the Miranda Waiver, this evidence becomes inadmissible in court on the grounds that the suspect was not informed of his legal rights.

Congress attempted to overturn the Miranda ruling just two years later, with the passage of the Omnibus Crime Act of 1968 (Jackson, 1999). Section 3501 of the Omnibus Crime Act gave Federal judges the discretion to determine if a confession is voluntary or not, regardless of whether the Miranda Warning and Waiver was provided in accordance with the procedures established by *Miranda v. Arizona* (Carelli, 1999). Commonly referred to as 3501, this law has rarely been invoked in the past 30 years because it was assumed that the Miranda law took precedence (*Miranda on Trial*, 2000).

### Rethinking Miranda

The U.S. Supreme Court recently reviewed the Miranda Warnings as a result of *Dickerson v. USA*. The circumstances leading to the review involve a man named Charles Dickerson, who was questioned at his home by FBI agents in 1997 regarding a series of bank robberies in the area (Jackson, 1999). Dickerson began to make statements about his whereabouts during the most recent robbery. According to court records, federal agents had Mirandized Dickerson, but the time at which this occurred is in dispute. A Utah law professor, acting as a friend of the court, argued that Section 3501 allows for the use of the evidence Dickerson provided to federal agents through his statements. However, as of June 2000, the Supreme Court affirmed the 1966 decision requiring law enforcement to administer the Miranda Warnings prior to questioning (Vicini, 2000).

### Learned Helplessness & Limited Educational Opportunities

Prior to the development of sign language interpreting as a profession, deaf Americans whose primary language was ASL relied on family members and acquaintances to assist them with communication (Frishberg, 1986). Many undereducated deaf people became dependent on "protectors," or those family, friends, or acquaintances who could meet their most basic communication needs. These protectors, most of whom did not know sign language, communicated with the outside world,

sometimes deciding what information the deaf person should and should not have, and making decisions for them.

Although today there are many empowering communication options available to those who are deaf, the values and practices of dependence remain deeply ingrained in the psyche of many less educated members of the deaf community. This dependence on others can seriously impact a deaf suspect's perception of the roles of the arresting officer and sign language interpreter in the Mirandizing and interrogation situation. For example, deaf persons who are accustomed to others making decisions for them will likely perceive the choices set forth in the Miranda Warnings as dictates, and sign language interpreters as friends.

Readability studies show that the Miranda Warnings, which may vary slightly from state to state, are typically written at a sixth to eighth grade comprehension level (Vernon & Coley, 1978; Simon, 1994; Vernon, Raifman & Greenberg, 1996; Center for Assessment and Demographic Studies, 1996). With at least 60% of the deaf population unable to read at the eighth grade level (Vernon & Coley, 1978; Vernon, Raifman & Greenberg, 1996) and 30% of these demonstrating functional illiteracy (Vernon, Raifman & Greenberg, 1996; Center for Assessment and Demographic Studies, 1996), this presents significant and often insurmountable problems for police officers attempting to Mirandize deaf suspects using print material.

### Legislation Impacting Deaf Suspects

Precursors to the ADA law were Section 504 of the Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act (IDEA). Originally, these statutes focused on assuring equal access to educational and rehabilitation opportunities for disabled students. The ADA extends the civil rights established by IDEA and Section 504 to the general disabled population. Thus, the ADA protections apply to deaf suspects in arrest situations, deaf defendants in the courtroom, and deaf inmates in correctional facilities.

### Who Is Protected?

In order for a deaf suspect to receive accommodation under the ADA, he must first be identified as both a disabled individual and a qualified individual. The ADA (U.S. Department of Justice, 1990) defines a disabled individual as:

Any person with a physical or mental impairment which substantially limits one or more major life activities such as self care, manual tasks, walking, seeing, hearing, breathing, learning and working, and has a record of such

an impairment, or is regarded as having such an impairment.

A deaf suspect meets this standard, inasmuch as hearing has been defined as a major life activity by ADA statutes.

A qualified individual is “an individual with a disability who, with or without the provision of auxiliary aids and services, meets the essential eligibility for the receipt of services or participation in programs or activities provided” (U.S. Department of Justice, 1990). Let’s examine this further by reviewing a relevant case history.

### The Bonner Case

The case of *Bonner v. Lewis, Crowley & Vega* (1988) provides an illustration of how a person is determined to be a qualified individual, or in this case, one who is eligible to receive prison services. Bonner, a deaf prison inmate, filed a pre-ADA claim that invoked Section 504 of the Vocational Rehabilitation Act, from which many of the ADA statutes have been patterned.

Bonner alleged that he had submitted repeated requests for a qualified interpreter for medical services, counseling, and administrative hearings within the prison. However, only inmate interpreters were provided. In his complaint, he alleged that information about the nature of his crime could cause a threat to his personal safety if inmate interpreters leaked it to the general prison population. Bonner, who read at the fourth grade level, also reported that corrections officers had tried to communicate with him using a TTY on numerous occasions.

Among several points that Bonner raised under Section 504 were that his due process rights had been violated because effective communication, in the form of a qualified interpreter, had not been provided at his classification hearing. Therefore, he had not been able to understand well enough to participate in prison hearings regarding his own placement. The court established that Bonner was both a disabled individual and a qualified individual because the prison was receiving federal funds and providing a range of services, programs, and activities to the other inmates. As an inmate of the facility, Bonner met the essential eligibility requirements and therefore was entitled to equal access to the same services and programming that was offered to the other inmates. Thus, for Bonner to participate in prison programming required the services of a qualified sign language interpreter.

### Public Entities

Title II of the ADA is centered on access to public entities and is the section most relevant to the activities of law enforcement. Public

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entities are defined as any state, federal, local government agency, department, or instrument of the state or state local government. Unlike Section 504 of the Rehabilitation Act of 1973, the ADA's protections transcend recipients of federal funds. Therefore, it is not necessary for a public entity such as law enforcement to receive federal funding in order to be subject to ADA mandates. Title II of the ADA outlines the applicable issues facing law enforcement when interacting with deaf individuals. Two basic components that must be adhered to when providing reasonable accommodation to deaf suspects are effective communication and the provision of a qualified interpreter in cases in which an interpreter is required.

**Effective Communication**

ADA statutes recommend that when making the determination of what mode constitutes effective communication, law enforcement consult with the deaf person about the most appropriate form of accommodation. For example, when preparing to Mirandize a deaf suspect, effective communication absolutely must be established between the officer and suspect prior to interrogation and the taking of a statement, in order to avoid civil rights violations. Even an inadvertent violation of an individual's civil rights when undergoing the Miranda Warning process can result in the inadmissibility of any evidence gathered as a direct result of the statements made during the arrest and interrogation procedure. In the case of the 917,605 Americans who are deaf and use ASL (Deaf World Web, 1980), the requirement of effective communication is most often satisfied through the use of a qualified interpreter. The Hindsley case provides insight into the meaning of the term, qualified interpreter.

**The Hindsley Case**

In 1997, police responded to a call from a Salvation Army facility to investigate a report of a child's body found by shelter staff in a room that the child had been sharing with his father, George Hindsley (*Wisconsin v. Hindsley*, 2000). The investigating officer suspended the interview until an RID certified interpreter could be present. The interpreter, certified at the generalist level and possessing four years of post-certification experience, had never before interpreted the Miranda Warnings. The entire four-hour interview was videotaped, as should be done in such proceedings involving a deaf person. Essentially, the actions by the officer managing the case demonstrate that he was adhering to the guidelines for managing deaf criminal suspects as set forth by the Police Executive Research Forum (1992).

Hindsley then filed a motion for suppression of his statements to the arresting officer. Hindsley alleged that the interpreter had not provided the Miranda Warnings in language that he could understand. Evaluation of the videotape by two specialists in the field of legal sign language interpreting determined that the Warnings had been transliterated, or signed in an English-like format.

Further evaluation of Hindsley's language by the specialists revealed that he uses ASL with an American Indian influence. Therefore, Hindsley required an interpretation in ASL rather than an English transliteration. It was established before the court that the Miranda Warnings had not been provided in Hindsley's language. Although Hindsley's linguistic competence was never introduced as an issue throughout these proceedings, a deaf interpreter was used at Hindsley's withdrawal hearing, a technique that is often used to provide communication to people with limited proficiencies in both sign language and English.

This critical error in establishing effective communication resulted in the inadmissibility of 109 pieces of evidence gathered solely from the interrogation. The appellate court affirmed the district court's decision, citing that while Hindsley's statement was voluntary, he did not knowingly and intelligently waive his rights as intended by the Miranda Waiver.

### A Qualified Interpreter

The ADA defines a qualified interpreter as one who is "able to interpret effectively, accurately, and impartially, both receptively and expressively, using any specialized vocabulary necessary" (U.S. Department of Justice, 1990). The implications of Hindsley's case are tremendous, as in many courtrooms across America, a qualified interpreter has heretofore been defined as one who has obtained certification from the National Registry of Interpreters for the Deaf (Pyles v. Kamka, 1980; Delong v. Brumbaugh, 1989; Clarkson v. Coughlin, 1993).

The Hindsley case vividly illustrates that determining who is a qualified interpreter is subject in part to the language ability and communication mode of the deaf suspect. The interpreter in the Hindsley case testified that she had understood his responses, and therefore felt that communication had been successful. The court's opinion was that the interpreter's understanding of Hindsley did not ensure that Hindsley understood her. Effective communication cannot be established based solely on standards such as interpreter credentials, but must also include a vigilant evaluation of the suspect's language by the sign language interpreter and the arresting officer.



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Minimizing Evidentiary Errors When Mirandizing Deaf Suspects

The failure to properly Mirandize deaf suspects results in evidentiary mistakes that can have tragic consequences, as demonstrated by the Hindsley case (*Wisconsin v. Hindsley*, 2000). Deaf criminals should be brought to justice just as hearing criminals are, however they are entitled to the same civil rights as their hearing counterparts (Vernon & Coley, 1978). For deaf suspects, the Miranda Warnings and the ADA safeguard these rights. Therefore, familiarity with the accommodation process and preparedness by law enforcement is a key aspect in avoiding evidentiary errors.

Determining Which Accommodation

Upon realizing that a suspect is deaf, law enforcement must establish effective communication prior to Mirandizing. Under ADA, the accommodation provided does not have to be the best one available, but it must be an effective one. For example, accommodations such as reading and writing can be utilized following assessment of the suspect's reading skills, if the suspect demonstrates reading proficiency at the eighth grade level. Additionally, nothing should be assumed about a deaf person's ability to understand spoken English, even if the suspect says that he understands or that he can speechread. The Piddington case exemplifies typical problems associated with speechreading.

The Piddington Case

Michael Piddington, a deaf man, was arrested for driving while intoxicated. He successfully had the results of his blood alcohol test suppressed by the court on the basis that ASL was his language and the arresting officers had not provided him with communication in his language. During his arrest proceedings, Piddington had signed an Informed Consent form for the purpose of obtaining a blood alcohol sample following an explanation of the form by police, who used speechreading (*Wisconsin v. Piddington*, 2000). Piddington alleged that he did not understand the Informed Consent in the format in which it was provided. An officer with basic sign communication skills who had been called to the scene to facilitate communication testified that Piddington was using his voice, thus, she followed suit with the assumption that because he spoke he could read English at the level required to understand the consent form.

It should be noted that most deaf people understand only 5-25% of communication provided through speechreading (Vernon & Andrews, 1990). Hence, this technique is not recommended in any situation in which Miranda Warnings must be administered (Vernon, Raifman & Greenberg, 1996). If Piddington had been Mirandized using spoken English, he might

have successfully argued a violation of his civil rights. Thus, police officers should avoid speechreading completely in administering the Miranda, in interrogation, and other proceedings such as search and seizure waivers. Regardless of what a suspect may say, speechreading is a consistently unsuccessful technique and will likely create a viable loophole in court.

### Identifying Incompetence

Although not typically recognized in the courts, linguistic incompetence is likely a prevalent issue of undereducated deaf defendants (Vernon & Raifman, 1997). Approximately 10% the deaf population has been estimated to have a condition known as Surdophrenia or Primitive Personality Disorder (PPD), a severely disabling form of incompetence outlined in the research of Basilier (1964), Vernon (1996), and Vernon & Raifman (1997). This disorder is characterized by three or more of the following: a meager knowledge of sign language, English, or a foreign language; a reading level of grade 2.9 or below; a history of little or no formal education; and limited or no knowledge of the basics of daily living, such as how to make change or function on a job (Vernon & Raifman, 1997). Persons with PPD may not be equipped to answer questions about their communication needs, even when given the opportunity to do so. They will often try to get along without an interpreter in an attempt to please law enforcement. Many are fearful of authority figures and believe, naively so, that they will be released if they comply with requests for information and a confession from the police (Vernon, Raifman & Greenberg, 1996). They will often pretend to read Miranda Warnings as presented in print form, then sign a Miranda Waiver, not knowing what they have signed. Typically fearful of situations in which hearing people become angry and frustrated due to communication barriers, they are unlikely to admit their inability to understand (Simon, 1994). Instead, they nod with a thoughtful expression as if they comprehend what is being said (Table 2).

The courts have long recognized severe mental retardation and mental illnesses such as psychosis as grounds for declaring an individual incompetent to stand trial. Individuals with these conditions are usually referred to mental hospitals rather than sentenced to prison. However, a minority of deaf people have another form of incompetence in regards to standing trial, which is referred to as linguistic incompetence (Vernon & Miller, in press).

**Table 2.** Characteristics and Coping Strategies of Linguistically Incompetent Deaf Suspects when Interacting with Law Enforcement

CHARACTERISTIC	COPING STRATEGY
Fear of authority figures	Overly accommodating of authority
Functionally illiterate	Will sign confessions, waivers, and other legal documents without comprehending the contents
Limited vocabulary	Nods and smiles as if following conversation
Does not understand time concepts	Affirms times, dates, and events proffered
Does not understand choices	Affirms final choice offered
Dependency on protectors	Personal decisions left to protectors
Not aware of civil and legal rights	Unlikely to request accommodation
Avoidance of embarrassment	Unlikely to ask for clarification
Confusion about roles of professionals	Often view interpreters as friends

Adapted from Garfinkel, Jordan, & Kragthorpe, 1997; Vernon & Raifman, 1997; Vernon, Steinberg, & Montoya, 2000.

### Evaluating Literacy

The Police Executive Research Commission recommends that an eighth grade reading level be established prior to administration of Miranda Warnings in print format (Vernon, Raifman & Greenberg, 1996). A useful way to assess if writing is appropriate for a deaf suspect is to ask the suspect to read a newspaper article and answer open-ended questions about the contents (Vernon, Raifman & Greenberg, 1996). Questions requiring yes and no answers should be avoided during the assessment, as the goal is to see if the deaf person can present a cogent explanation that indicates comprehension.

Regardless of what a deaf signing suspect says about his understanding of English, if an officer suspects that written English is ineffective, a sign language interpreter should be dispatched prior to

Mirandizing and questioning the suspect. Upon arrival, the interpreter should be given 10-30 minutes to converse with the suspect in order to evaluate the language necessary for the provision of effective communication (Vernon, Raifman, Greenberg, & Montiero, in press). In addition, the police and the interpreter should work as a team to continually assess the comprehension of the suspect. This is best accomplished by asking the suspect to restate the information in his own words, or to give examples. The officer should then confer with the interpreter, documenting the suspect's language as identified by the interpreter, as well as any certifications held by the interpreter.

### Videotaping the Interview

In addition to the ongoing process of comprehension checks and sensitivity to issues of linguistic incompetence, it is necessary to videotape the administration of the Miranda Warnings and the ensuing interrogation (Vernon, Raifman & Greenberg, 1996; Eadie, 2000). Should a question about language use by the interpreter and comprehension by the suspect arise in court, the videotaped interview can be invaluable in resolving the issue. (Vernon, Raifman & Greenberg, 1996).

**Table 3.** Post-ADA Cases In Which Deaf Suspects Were Provided With Inadequate Communication During Miranda, Interrogation, and Arrest Procedures

CASE	ADMINISTRATION OF MIRANDA PER COURT RECORD
Georgia v. Hendrix, 1996	Officer with one sign course taken in early 1970's
Ohio v. Stanley, 1997	Note writing failed, officer signed
Easley v. Texas, 1998	No accommodation provided
Tennessee v. Perry, 1999	Speechreading and writing
Wisconsin v. Hindsley, 2000	Interpreter did not use ASL, videotaped

### Learn from Other's Mistakes

Police departments should not wait for a deaf person to break the law before considering what accommodations will be necessary. Law enforcement entities that are not prepared for a deaf suspect may find that cases will be more difficult to substantiate in court if there is a question about how the Miranda Warnings were administered (Table 3). Evidence

can be deemed inadmissible in court, and in the most serious circumstances, dangerous individuals continue to interact with society.

**Table 4.** Consent Agreements Between Law Enforcement and the United States of America Resulting from Complaints by Deaf Citizens

AGREEMENT PARTY	ALLEGED VIOLATION
Glendale Police Dept	No interpreter as requested at arrest
Bell Gardens Police Dept	Denied an interpreter upon request
Colorado Police Dept	No interpreter provided for taking crime report
Pinellas County Sheriff Dept	Failed to provide interpreter at arrest; failed to provide TTY in jail as requested
Alexandria Police Dept	Denied an interpreter upon request
Rochester Police Dept	No interpreter provided for taking crime report
Wood County Sheriff Dept	No qualified interpreter at arrest; did not inform of head count in jail; no emergency/disaster notification in jail; no TTY or TV captioning
Houston Police Dept	Did not provide interpreter so that inmate could inform police about his medication needs; no TTY; no interpreter provided for taking crime report
Wisconsin State Patrol	Refused request for pen and paper during arrest; pulled from car without explanation; blocked view preventing sign communication with a passenger; threatened to handcuff suspect if he used sign

As a result of several instances of alleged civil rights violations against deaf suspects, there are currently several consent agreements between the United States of America and law enforcement in Arizona, California, Colorado, Ohio, Florida, Louisiana, New York, Texas, and Wisconsin (U.S. Department of Justice, 2000) (Table 4). These agreements are not intended to be admissions of guilt, rather they bypass costly litigation by submitting to federal monitoring in the development and

implementation of policies and accommodations. As most of these settlements are similar in nature, they provide excellent guidelines for any law enforcement agency seeking to develop and incorporate policies on accommodating deaf suspects prior to an arrest situation. Taking a proactive approach now may save a department from costly and time-consuming litigation later.

### Considerations for the Future

The most significant factors affecting the adequate delivery of the Miranda Warnings by law enforcement are: the failure to provide appropriate accommodation by law enforcement, the scarcity of sign language interpreters qualified to interpret the Warnings, and the varying educational backgrounds and language abilities of deaf suspects. How then, can these deficits be resolved? In many cases, complaints by the deaf public and litigation will be the method by which police departments will be forced to remediate this issue. Three recommendations for improvement can be made, in the areas of police awareness, sign language interpreter training, and in deaf education.

An internet search revealed a limited number of formal education opportunities for sign language interpreters who want to develop proficiency in legal proceedings. Currently, the Wisconsin Legal Interpreter Training Institute offers a three-part legal training session. However, more training programs need to be developed and perhaps federally subsidized. This would help to ensure maximum participation in legal training by practicing interpreters.

Additionally, the field of deaf education must endeavor to foster student proficiencies in ASL and written English. The ability to read is paramount to functioning successfully in American society. Middle schools and high schools must educate deaf students about how various social, legal, and justice structures such as law enforcement operate. Although this is an important piece of the big picture, under the ADA the responsibility for providing legal proceedings in an accessible format is placed upon law enforcement and sign language interpreters. Community partnerships between these two entities are strongly encouraged in order to develop well-defined standard operating procedures for the police officer and interpreter who must accommodate a deaf suspect in order to deliver the Miranda Warnings.

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